



DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and
Trade Bureau

Industry Circular

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Use of Social Media in the Advertising of Alcohol Beverages

To: Proprietors of Bonded Wineries, Bonded Wine Cellars, Taxpaid Wine Bottling Houses, Beverage Distilled Spirits Plants, Breweries, Importers, Wholesalers and Others Concerned.

1. PURPOSE.

This circular provides guidance to industry members and others on the Alcohol and Tobacco Tax and Trade Bureau's (TTB) position that the advertising provisions of the Federal Alcohol Administration Act (FAA Act) and the implementing regulations under 27 CFR parts 4, 5, and 7 apply to all advertisements (as defined in the regulations) in any media, including social media. This guidance provides a basis for voluntary compliance with the FAA Act and the TTB advertising regulations with regard to social media, both in terms of required mandatory statements and prohibited practices or statements.

2. AUTHORITY.

Section 105(f) of the FAA Act, 27 U.S.C. 205(f), authorizes the Secretary of the Treasury to prescribe regulations for the advertising of wine, distilled spirits, and malt beverages.

The FAA Act requires that these regulations prevent consumer deception; prohibit the use of misleading statements, irrespective of falsity; and provide the consumer with adequate information as to the identity and quality of the product advertised.

The TTB advertising regulations promulgated under the FAA Act are as follows: 27 CFR part 4, subpart G sets forth the regulations for advertising wine; part 5, subpart H sets forth the regulations for advertising distilled spirits; and part 7, subpart F sets forth the regulations for advertising malt beverages. More specifically, the regulations contained in §§ 4.62, 5.63, and 7.52 require certain mandatory statements (e.g., responsible advertiser name and address) to appear in advertisements for wines, distilled spirits, and malt beverages, respectively, and the regulations contained in §§ 4.64, 5.65, and 7.54 prohibit certain advertising practices and statements from appearing in such advertisements. In the case of malt beverages, TTB's advertising regulations apply to the extent that state law imposes similar requirements with respect to the advertising of malt beverages introduced into or received into the particular state.

3. BACKGROUND.

TTB reviews advertisements that appear in various media, including print, television, outdoor, and website advertisements, and enforces the regulations related to advertising for alcohol beverages.

Advances in technology have led to the development of new forms of advertising (i.e., social media) that are interactive, allowing consumers and industry members to generate content and create links between various social media outlets. These outlets include, but are not limited to, social network services such as Facebook or MySpace, video sharing sites such as YouTube or Flickr, weblogs or "blogs," forums or comment sections directly on websites, and applications (apps) for mobile devices. With the emergence and growth of these types of media outlets, TTB is expanding the breadth of its advertising reviews.

4. DISCUSSION.

The TTB advertising regulations state that no industry member (for the purposes of this Industry Circular, persons described in §§ 4.60, 5.61, and 7.50), shall directly or indirectly or through an affiliate publish or disseminate or cause to be published or disseminated an advertisement that is in, or calculated to induce sales in, interstate or foreign commerce unless the advertisement conforms to the regulatory requirements. The scope of the regulations is very broad, covering all forms of advertisements, including "any other printed or graphic matter." The definition of *advertisement* in §§ 4.61, 5.62, and 7.51 includes any written or verbal statement, illustration, or depiction that is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail. The regulations list specific types of advertising, including "any other media." TTB interprets "any other media" in the regulations to apply to advertising in all types of media, including types of media that did not exist when the regulations were originally adopted.

The following guidance is intended to assist industry members in ensuring that advertisements for alcohol beverages that appear in social media outlets comply with the FAA Act and the TTB advertising regulations. Because of changing technology and the ongoing evolution of social media, this is not intended to be an all-inclusive list of the types of social media. However, the general principles set out in this circular can be applied to other social media outlets that have been or will be developed.

We also note that this circular provides general information regarding TTB's enforcement of the advertising provisions of the FAA Act and TTB regulations. TTB evaluates specific advertisements on a case-by-case basis under the advertising provisions.

a. Social Network Services (e.g., Facebook, LinkedIn, Friendster, MySpace, etc.).

A social network service is a service, platform, or site where users communicate with one another and share media, such as pictures, videos, music, and blogs, with other users. Many industry members have created pages on social network services for their company and/or a particular brand. These are sometimes referred to as "fan pages" or "pages," and users of the social network service can become "fans" of the company or brand, creating a link between their own page and the fan page. The purpose of fan pages is to increase brand awareness and loyalty by allowing industry members to communicate with consumers in an interactive manner. TTB considers fan pages for alcohol beverage products or companies and any content regarding alcohol beverage products posted to the pages by the industry member to fall under the category of "any other media" in TTB's regulatory definition of advertisement, and therefore the fan pages are subject to the provisions of the FAA Act and TTB regulations.

Because TTB considers industry member fan pages for alcohol beverages to be advertisements, all mandatory statements required by the regulations (in §§

4.62, 5.63, and 7.52) must be included on them. TTB views the entire fan page (i.e., the "home" page and all sub or tabbed pages directly associated with the "home" page) as one advertisement, so mandatory statements need only appear once on the fan page, either on the "home" page or on any sub or tabbed pages directly associated with the "home" page. The regulations require that mandatory statements on alcohol beverage advertisements be: (1) conspicuous and readily legible; (2) clearly a part of the advertisement; and (3) readily apparent to the persons viewing the advertisement. Thus, mandatory statements may not be hidden or buried in an obscure location on the fan page.

Although the regulations do not require that mandatory statements appear in a particular location, TTB strongly recommends that, for the benefit of consumers, advertisers consider placing mandatory statements in a location where a viewer would most logically expect to find information about the brand or the company. This is generally called the "profile" section, though it might have a different name depending on the service and may change as social media sites are updated or revised (e.g., currently on Facebook, it is the "About" section).

The regulations regarding prohibited practices or statements (in §§ 4.64, 5.65, and 7.54) also apply to social network fan pages. Any information or images posted to a fan page by an industry member, including content created by a third party and reposted by an industry member, is part of the fan page and therefore considered to be part of the advertisement. Similarly, TTB considers any information or images posted to industry members' websites by the industry member to be part of the advertisement.

b. Video Sharing Sites (e.g., YouTube).

Video sharing sites allow individuals or companies to post videos to an internet website to be viewed by the public. Viewers can also post comments about the videos. Individuals or companies can set up an account on the site and create a "channel" to which only they can post videos.

Videos about alcohol beverages that are posted to video sharing sites by industry members are considered to be advertisements if they fall within the regulatory definition of advertisement in §§ 4.61, 5.62, and 7.51 as a written or verbal statement, illustration, or depiction that is in, or calculated to induce sales in, interstate or foreign commerce. Therefore, for videos that are considered to be advertisements, all of the regulatory requirements regarding mandatory statements (in §§ 4.62, 5.63, and 7.52) and prohibited practices or statements (in §§ 4.64, 5.65, and 7.54) would apply to both the video and any associated "channel" created by an industry member. As with social network services, there is generally a location on each video sharing site to provide profile information where a viewer would most logically expect to find information about the brand or the company. TTB recommends that mandatory statements be placed there.

In addition, for videos that are subject to the advertising regulations, the industry member must include the mandatory statements within the videos themselves, if there is no associated "channel" or profile section, or if the industry member allows video content to be downloaded by viewers. By allowing videos that the industry member posts to be downloaded, the industry member is in effect disseminating an advertisement, so each advertisement must contain all of the mandatory statements required by regulation. When the industry member has

both a "channel" or profile section and individual videos, TTB recommends placing the mandatory statements on both.

For videos and video sharing sites that TTB considers to be advertisements, the regulations regarding prohibited practices or statements also apply to any information that the industry member may place on the site.

c. Blogs.

A blog (short for web log) is a type of website intended for public viewing that is maintained by an individual or company and is frequently updated with entries that may include commentary, events, videos, or pictures. Most blogs are interactive and allow visitors to leave comments or messages; it is this interactivity that distinguishes them from static websites.

If an industry member maintains a blog about itself (e.g., ABC Winery blog) and discusses issues related to the company, its products, or the industry in general, the blog is considered by TTB to be an advertisement and is subject to TTB's advertising regulations because it is a written statement by the industry member that is calculated to induce sales in interstate or foreign commerce. Accordingly, the mandatory statements prescribed in §§ 4.62, 5.63, and 7.52 must be included in the blog, and the regulations regarding prohibited practices or statements contained in §§ 4.64, 5.65, and 7.54 also apply to anything posted by the industry member on the blog.

d. Microblogs (e.g., Twitter, Tumblr).

A microblog differs from a traditional blog in that posts are typically very short.

Microblog posts often include short sentence fragments, images, or links to videos. Commercial microblogs are designed to promote websites, services, or products. If a microblog is determined to be a written statement calculated to induce sales in interstate or foreign commerce, it will be considered to be an advertisement under TTB's regulations.

The public can "follow" an industry member's microblog posts, which will then appear on their own microblog page or be sent to a mobile phone or other device. Many microblog services have character limitations of around 140 characters.

Due to these character limitations, TTB has determined that it is impractical to require mandatory statements to appear in every microblog post made by the industry member. However, mandatory statements prescribed in §§ 4.62, 5.63, and 7.52 must appear in the advertisement in a manner that is conspicuous and readily legible. Similar to other social network services described above, industry members may include the mandatory statements on their microblog profile page.

Character limitations have no effect on the application of the regulations regarding prohibited practices or statements prescribed in §§ 4.64, 5.65, and 7.54; thus, they must be followed for each microblog post.

e. Mobile Applications.

Some industry members are creating applications, also known as "apps," that can be downloaded to consumers' mobile phones or other handheld devices. These apps may provide drink recipes, assist consumers with finding locations where a product is served, or provide other information related to an alcohol beverage that the consumer may find of interest. TTB considers mobile apps related to alcohol beverages to be advertisements consistent with §§ 4.61, 5.62, and 7.51 because

mobile apps are written or verbal statements, illustrations, or depictions that are in, or calculated to induce sales in, interstate or foreign commerce. Because these apps are downloaded by the consumer to a mobile device, however, TTB considers them to be a *consumer specialty advertisement*, which is defined at 27 CFR 6.84(b)(2) as, "...items that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors." Accordingly, under §§ 4.62(c)(2), 5.63(e)(2), and 7.52(c)(2), the only mandatory statement required to appear in the app is the company name or the brand name of the product.

The regulations regarding prohibited practices or statements (in §§ 4.64, 5.65, and 7.54) apply to mobile apps for alcohol beverages that are created by industry members as they would for any other advertisement.

f. Links and Quick Response Codes

Industry members frequently post links to other websites or pages on their social media advertisements (including social network services, video sharing sites, blogs, microblogs, and mobile applications). In reviewing social media advertisements, TTB will consider the totality of the message presented by the advertisement and any links contained therein to determine if the content of the links will be considered part of the advertisement. In addition, any description of the linked site or page prepared and posted by the industry member that appears on the industry member's social media advertisement must not violate the regulations concerning prohibited practices or statements because TTB considers the description of the linked site to be part of the industry member's advertisement. Similarly, TTB considers any description of links included on industry members' websites to be part of the advertisement.

An industry member may also provide links to other websites or pages for different alcohol beverages or companies for which it is the responsible advertiser. In that case, TTB would consider the linked website or page as a separate advertisement that must contain all necessary mandatory information and comply with the prohibited practices or statements regulations.

Industry members may also enable consumers to access content by including a quick response code (or QR Code) on a label or advertisement. Consumers can scan the QR Code with their mobile device to access the additional content. Depending on the type of media that is linked to by the QR Code (such as the industry member's webpage, mobile application, or blog), the relevant regulations and TTB public guidance documents will apply. If, for example, the QR code links to a document, such as a drink recipe using an industry member's product, the recipe will be considered an advertisement because it is a written or verbal statement, illustration, or depiction that is in, or calculated to induce sales in interstate or foreign commerce. The regulations regarding prohibited practices or statements (in §§ 4.64, 5.65, and 7.54) also would apply to the additional content obtained by scanning the QR Code as they would for any other advertisement. If questions arise concerning which regulations apply to a particular type of media, industry members may contact TTB at the contact information listed below.

5. QUESTIONS.

If you have any questions concerning this circular, please contact the Market Compliance Office by phone at (202) 453-2250 and press option 5, or by e-mail at alfd@ttb.gov.

Signed by John Manfreda

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